

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the
Commission's Future Energy Efficiency Policies,
Administration and Programs.

Rulemaking 01-08-028
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING CONTRACT TEMPLATE FOR 2002-03
LOCAL ENERGY EFFICIENCY PROGRAMS**

1. Summary

In this ruling, I approve a template contract (Appendix A hereto) for all Investor Owned Utilities (IOU) to use in contracting with third parties awarded local energy efficiency funding for 2002-03. The contract is the product of give and take among the Commission, the IOUs and the third parties. As such, it may not be exactly in keeping with every party's wishes. However, I have taken steps to ensure the contract is fair and reasonable to all sides. I also identify the key areas of disagreement and explain how I resolved them.

2. Background

In Decision (D.) 02-05-046, the Commission delegated to me the authority to "approve a set of standard terms that the IOUs shall use in their contracts with third parties." The Commission required that "each IOU . . . use a consistent contract template statewide."¹ After D.02-05-046 issued, the Commission's

¹ D.02-05-046, *mimeo.* at 21-22.

Energy and Legal Divisions worked with the IOUs to develop a draft template. The Energy Division circulated the draft to the providers awarded local energy efficiency funding to obtain their input.

The disputed contractual provisions relate to letters of credit, third party payment and reporting, IOU discretion and Commission oversight, consumer complaints, indemnity and attorneys' fees, energy efficiency measure product standards, and double-dipping. I discuss each of these issues in sequence below.

3. Discussion

A. Letters of Credit

The draft decision that gave rise to D.02-05-046 contained a requirement that all third party providers post a bond to assure their performance. The providers responded that this requirement was infeasible or impossible, and as a consequence, D.02-05-046 eliminated this particular requirement. The IOUs now propose letters of credit, which third party contractors assert presents the same problem as did bonding. I expect the IOUs carefully to monitor programs so that problems are detected early, and there are several safeguards built in to the programs, including monthly as well as quarterly reporting and opportunities to hold back payments, to ensure performance. However, given the difficulty parties cite in obtaining letters of credit, we will not impose this requirement in the template contract at this time.

B. Third Party Payment and Reporting

The Commission in D.02-05-046 provided that the template contract must contain a payment process, including a provision to allow the CPUC and/or IOU to require, at any time, accounting of expenditures with supporting documentation. D.02-05-046, *mimeo.*, at 20-21. The template contract reflects this third party obligation by requiring third parties to submit monthly reports that

reflect direct program implementation costs and contain supporting documentation, as well as quarterly reports with supporting documentation for other reported costs.

This cost information is essential for the IOUs to ensure that third parties are spending precious program funds wisely. If a third party installs all promised measures at a far lower cost than predicted, the third party should not simply be allowed to pocket the difference as a windfall. Rather, in such a case, the third party will either be required to install additional measures, or the IOU will be allowed to withhold a portion of the remaining payment with Commission staff concurrence. The spread between predicted cost and actual costs must be “material” in order for the IOU to withhold payment or require additional measures, and the contract requires the concurrence of the Commission staff for the IOU to install additional measures or withhold payment.

I believe this portion of the contract adequately recognizes the fact that third parties cannot be expected to have predicted exactly how many measures they would be able to install with the awarded funding. By the same token, it insures that hard-earned ratepayer funding is not wasted on windfall profits to third parties.

C. IOU Discretion and Commission Oversight

Most third parties with an opinion expressed the desire that there be some limit on IOUs’ rights to take adverse contract action against them. The contract now contains language requiring that the IOUs act “reasonably” in certain areas in which they have discretion - *e.g.*, to require more third party information. The contract also requires Commission concurrence with IOU decisions to withhold funds or terminate third party contracts.

D. Consumer Complaints

Key to the IOUs' role as contract administrators is their responsibility to oversee the day-to-day functioning of the contracts. This role includes second level handling of complaints, with the third party as the first level. Having the IOUs handle complaints is critical to their role in program oversight. A different, hands-off approach by the IOUs would be inconsistent with D.02-05-046, which anticipates that IOUs will do more than simply disburse program funds. The contract now provides, in relevant part, as follows:

“At a minimum, Implementer's program materials shall contain a description of how a customer can complain first to the Implementer, then to the IOU, and finally to a contact person at the CPUC's Energy Division.”

E. Provisions That Public Entities May Be Legally Barred From Signing

Certain public entities may be unable under the law to indemnify IOUs or this Commission from loss related to the performance of energy efficiency programs or sign provisions requiring the payment of attorneys' fees. If a public entity can establish that it cannot legally sign certain provisions in the standard contract, the IOUs shall not require the provisions as a condition of the contract. In such a case, the parties should negotiate an alternative provision that best accomplishes the intent of the relevant provisions.

F. PG&E Specific Conditions and Product Standards

During the week of June 17, 2002, PG&E submitted additional proposed contractual material containing detailed specifications for each local provider to use in its program. We adopt some of their suggestions entitled to ensure consumer safety. In addition, some of the information will be included in the CPUC's Reporting Requirements, first issued May 17 of this year, subject to

modification by the Energy Division. However, most of the specific product standards, contained in a document entitled “Product Energy Efficiency and Installation Standards,” are not appropriate here. The Commission approved energy efficiency programs containing the providers’ own product specifications, and it is those specifications that should govern.

G. Clarification of IOU Obligation to Minimize or Eliminate Double-Dipping

The template contract contains the following provision requiring that third party program providers minimize double-dipping:

3.6.2. Prior to providing incentives or services to an eligible customer (“Customer”) for an energy efficiency measure(s), Implementer shall inform the Customer of other available programs, including the free IOU LIEE program, which offer incentives or services for the same measure(s).

I remind the IOUs that they have a reciprocal obligation stemming from D.02-05-046, which requires both third-party providers and the IOUs to minimize double-dipping. Thus, under D.02-050-46, the IOUs must also inform customers of other energy efficiency programs, including non-IOU programs, and perform the other requirements of the foregoing contractual provision.

3. Comments Allowed

Any party may comment on the contents of this ruling and the attached contract no later than Wednesday, June 26, 2002. Such comments shall be mailed to the Commission and served by email by close of business on that date. Parties shall send copies of their email messages to Diana Lee (dil@cpuc.ca.gov), Ariana Merlino (ru4@cpuc.ca.gov) and Administrative Law Judge Sarah Thomas (srt@cpuc.ca.gov).

IT IS ORDERED that:

1. The contract between IOUs and third parties for 2002-03 local energy efficiency funding shall be that attached in Appendix A to this ruling.

2. All IOUs administering local energy efficiency programs and third parties receiving funding for such programs shall use the contract in Appendix A as a prerequisite to receiving Public Goods Charge (PGC) funding for 2002-03. In rare cases, changes to the contract may be allowed with the approval of the Energy Division and the assigned Administrative Law Judge.

3. Any party may comment on the contents of this ruling and the attached contract no later than Wednesday, June 26, 2002. Such comments shall be mailed to the Commission and served by email by close of business on that date.

Dated June 24, 2002, at San Francisco, California.

/s/ MICHELLE COOKE for

Sarah R. Thomas

Administrative Law Judge

APPENDIX A
TEMPLATE CONTRACT
FOR ALL INVESTOR OWNED UTILITIES

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Contract Template For 2002-03 Local Energy Efficiency Programs on all parties of record in this proceeding or their attorneys of record.

Dated June 24, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.